

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID NEAL, JR.,

Defendant-Appellant.

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UNPUBLISHED

July 21, 2000

No. 216728

Saginaw Circuit Court

LC No. 97-013794-FC

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798. Defendant was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to sixty-six months' to fifteen years' imprisonment, to be served consecutively to a sentence he was serving in Louisiana. Defendant appeals by right. We affirm.

Defendant argues on appeal that the evidence was insufficient to convict him of assault with intent to rob while unarmed, MCL 750.88; MSA 28.283, because the prosecution failed to present evidence that he committed an assault by force or violence or by putting the victim in fear. There is no merit to this claim. Defendant was convicted of unarmed robbery, not assault with intent to rob. As our Supreme Court pointed out in *People v Sanborn*, 402 Mich 460; 265 NW2d 1 (1978), "[t]he assault with intent to rob unarmed statute is conjunctive; there must be an assault with force and violence. The attempted robbery unarmed statute is disjunctive; the offense can be accomplished *either by force and violence, or by assault, or putting in fear.*" *Id.*, 473-474, emphasis added. Since, on the facts presented at trial, a reasonable trier of fact could find either that defendant assaulted the victim, or that he put her in fear, the evidence is sufficient to sustain defendant's conviction for unarmed robbery.

Defendant also argues that his sentence of sixty-six months to fifteen years for unarmed robbery is not proportionate to the crime committed or his background. The proportionality of the sentence imposed by the trial court is reviewed for abuse of discretion. *People v Milbourn*, 435 Mich 630, 634-635; 461 NW2d 1 (1990). The trial court abuses its discretion when it violates the principle of proportionality by imposing a sentence that is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*, 636.

The sentencing guidelines do not apply to the sentencing of habitual offenders. *People v Hansford*, 454 Mich 320, 323; 562 NW2d 460 (1997). In sentencing an habitual offender, a trial court does not abuse its discretion by imposing a sentence within the statutory limits when the defendant's underlying felony and previous felonies show that the defendant has an inability to conform his conduct to the laws of society. *Id.*, 326. Defendant's sentence here was proportionate to both the crime and his circumstances. Defendant robbed a defenseless teenager in a manner that caused her to fear for her life. Defendant has a long history of substance abuse and a significant criminal history, mitigated only by defendant's community and family support. The trial court could have imposed a much harsher penalty and we find no abuse of discretion in the trial court's decision to sentence defendant to sixty-six months to fifteen years.

Defendant also argues that his sentence was so disparate from sentences imposed for similar crimes that it amounts to cruel or unusual punishment. Defendant's claim is without merit. A proportionate sentence is not cruel or unusual. *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997).

Affirmed.

/s/ Hilda R. Gage  
/s/ Roman S. Gibbs  
/s/ David H. Sawyer